

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In Re:

FEDERAL-STATE JOINT BOARD
ON UNIVERSAL SERVICE

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THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:)
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FEDERAL-STATE JOINT BOARD)
ON UNIVERSAL SERVICE)
)

Thursday,
November 23, 1998

Federal Communications
Commission
1919 M Street, N.W.
Washington, D.C. 20554

The meeting in the above-entitled matter was convened, pursuant to Notice, at 12:18 p.m.

BEFORE: SUSAN NESS
Chairman

APPEARANCES:

FCC BOARD

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Commissioner, FCC

DAVID BAKER
Commissioner, Georgia PSC

HAROLD FURCHTGOTT-ROTH
Commissioner, FCC

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LASKA SCHOENFELDER
Commissioner, South Dakota PUC

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APPEARANCES (continued):

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Commissioner, FCC

PATRICK H. WOOD, III, Chairman,
Texas PUC

OTHER PARTICIPANTS:

PETER BLUHM
Vermont PUC

ROWLAND CURRY
Texas PUC

LISA GELB
FCC

EMILY HOFFNAR
FCC

L. CHARLES KELLER
FCC

MARK LONG
Florida PSC

JIM SCHLICHTING
FCC

P R O C E E D I N G S

12:18 p.m.

CHAIRMAN NESS: I want to welcome everyone this -- not quite this morning, but this afternoon, to the meeting of the Federal State Joint Board on Universal Service. Last spring -- first, I would like to apologize a little bit for the delay.

We are waiting for one more commissioner. I apologize for the delay. This was not out of last-minute edits or details or anything like that. This was more of a scheduling conflict that had arisen over the course of the weekend, and so if folks were inconvenienced, we apologize.

Again, welcome to everyone. Last spring, the FCC referred certain issues to the U.S., the Federal-State Joint Board on Universal Service, for further development. These were very complicated but extremely important issues that were referred to this body as we tried to implement Congress's directives to preserve an advance universal service for everyone across this country. And the Joint Board agreed to complete it's initial deliberations by November 23rd, and here we are.

It was not an easy process, but I want, first and foremost, to applaud the dedication and hard work and insights of all members of the Joint Board and the Joint Board staff.

1 Today, we are going to be considering adopting
2 recommended decision on several issues. Our focus is on
3 universal support for high-cost customers. It's essential
4 we maintain affordable rates for telephone service, no
5 matter what other changes are taking place in the
6 telecommunications market place. And I believe that we are
7 all going to want to make some detailed comments after we
8 hear, first, from federal and state staff, who will be
9 presenting the recommendation. But, first, I would like to
10 recognize my friend, Julia Johnson, for any opening remarks
11 that she may have.

12 CHAIRPERSON JOHNSON: I don't have any formal
13 opening remarks. I know we have been waiting for quite a
14 while to get started in the process, and at the end of the
15 proceeding I would like to make some special thank-you's,
16 but for now, again, I want to first just compliment the
17 efforts of the staff and the commissioners. This has truly
18 been a collaborative process. With respect to the substance
19 that you have stated, our job was well defined, we went
20 about it in a joint way, and I'm pleased that we've been
21 able to reach a joint decision.

22 CHAIRMAN NESS: Did anyone else on the Joint Board
23 want to make an opening comment of any sort?

24 (No response.)

25 CHAIRMAN NESS: Okay. Hearing none, then I would

1 like to call on two members of the Federal-State Joint Board
2 Staff, Chuck Keller of the FCC and Peter Bluhm of Vermont,
3 to present this item.

4 MR. BLUHM: Good afternoon, Madam Chairman,
5 Members of the Joint Board. The 1996 Act acknowledges and
6 maintains the complementary roles that state and federal
7 authorities have played in preserving and advancing
8 universal service. Historically, both state and federal
9 regulators have ensured the availability of universal
10 service. This second recommended decision takes into
11 account this dual federal and state responsibility in a
12 manner that effectuates the principles and requirements of
13 Section 254.

14 The federal mechanism should provide support in a
15 manner that is designed to ensure that state universal
16 service needs are fully met, consistent with the state's
17 role with respect to universal service. This second
18 recommended decision establishes a framework for
19 accomplishing that difficult mission.

20 The Act requires that rates be just, reasonable, and
21 affordable, and that rates in rural, insular, and high-cost
22 areas be reasonably comparable to rates charged for similar
23 services in urban areas. The Act also requires specific,
24 predictable, and sufficient federal and state mechanisms to
25 preserve and advance universal service. The Joint Board and

1 the Commission determined previously that rates generally
2 are affordable.

3 While keeping in mind the need to ensure continued
4 affordability, this recommended decision focuses to a
5 greater degree on the issues of reasonable comparability and
6 how to ensure the sufficiency of federal support to ensure
7 both of those important public goals.

8 This recommended decision identifies three
9 possible ways in which universal service support could be
10 used: One, to provide support for high-cost areas to enable
11 the comparability of rates; two, to make existing interstate
12 support explicit; and, three, to make existing intrastate
13 support explicit. The recommended decision addresses each
14 of these possible uses for support.

15 This recommended decision recommends a federal
16 high-cost support mechanism for nonrural carriers that
17 enables rates to remain affordable and reasonably
18 comparable, even as competition develops but that is no
19 larger than necessary to satisfy that statutory mandate.
20 The decision suggests that the Commission be mindful of two
21 competing goals: one, supporting high cost areas so that
22 consumers there have affordable and reasonably comparable
23 rates; and, two, maintaining a support system that does not
24 by its sheer size overburden consumers across the nation.

25 The decision finds that current circumstances do

1 not warrant a high-cost support mechanism that results in a
2 significantly larger federal support amount than exists
3 today. It recognizes, however, that some states currently
4 may not receive support sufficient to enable reasonably
5 comparable rates, and thus acknowledges that support levels
6 may rise somewhat.

7 As an initial matter, the decision supports the
8 Commission's commitment not to reduce the current levels of
9 explicit, high-cost support to nonrural carriers.

10 Consistent with that commitment, the decision outlines an
11 initial methodology for directing sufficient federal support
12 to nonrural carriers to offset high intrastate costs in
13 states with insufficient internal resources to ensure
14 affordable and reasonably comparable rates.

15 It recommends that the Commission replace the
16 25/75 jurisdictional division of responsibility for high-
17 cost, universal support that was adopted in the universal
18 service order with a different methodology for nonrural
19 carriers, and Chuck Keller will describe that methodology.

20 MR. KELLER: Good afternoon. The decision
21 recommends that the distribution methodology contain two
22 primary elements. First, study areas with average, forward-
23 looking proline costs significantly in excess of the
24 national average cost should be identified. The decision
25 recommends that the Commission use a forward-looking cost

1 model to estimate forward-looking costs but does not endorse
2 any particular model for this purpose.

3 Second, the state's ability to support its own
4 universal service needs should be determined. federal
5 support should be provided only for costs that exceed both
6 of these thresholds. In the first step of the process,
7 identifying areas with high cost, the decision recommends
8 that the Commission use the cost of providing supported
9 services rather than local rates to evaluate rate
10 comparability. This is because rate-setting methods and
11 goals may vary across jurisdictions.

12 The decision recommends that the Commission select
13 a single national cost benchmark against which the forward-
14 looking costs in a given study area will be compared to
15 determine whether that study area has costs that are
16 significantly above the national average. The decision
17 recommends that the Commission consider setting this
18 national benchmark at a level somewhere between 115 and 150
19 percent of the national weighted average cost per line.

20 The second step in determining federal support
21 would reflect that federal support is only one portion of
22 the shared federal-state responsibility established in
23 Section 254. federal support should only be used to
24 supplement the state's ability to address its own universal
25 service needs. In order to accomplish this second step, it

1 will be necessary to calculate a level of support that could
2 equitably and reasonably be assumed to be provided by
3 explicit or implicit state support.

4 The decision acknowledges that there are
5 potentially several ways to estimate a state's ability to
6 support its universal service needs, such as the ratio of
7 high to low cost lines in the state or the revenue that
8 could be raised by either a proline assessment or a
9 surcharge on intrastate revenues.

10 The decision recommends that federal support
11 determined by this methodology be used in the intrastate
12 jurisdiction to ensure the reasonable comparability of
13 rates. The decision also recommends that the states be held
14 harmless in the amount of explicit federal support that they
15 currently receive.

16 The decision recommends that the Commission
17 consider assessing carriers' contributions for high-cost,
18 universal service support based on all revenues rather than
19 just interstate revenues if the 5th Circuit determines that
20 this is permissible. The decision also makes
21 recommendations about the information that consumers should
22 receive from carriers in connection with the recovery of
23 universal service contributions.

24 It recommends that the Commission provide strict
25 guidance to telecommunications carriers regarding the extent

1 to which they recover their universal service contributions.
2 It also recommends that the Commission provide express
3 instructions regarding the manner in which carriers may
4 depict on bills any charges used to recover universal
5 service contributions. Specifically, it recommends that to
6 the extent permitted by law, the Commission prohibit
7 carriers from depicting such charges as attacks or a
8 mandated charge.

9 The ongoing cooperation throughout this proceeding
10 between the federal and state staff and members of the Joint
11 Board is a further example of the vitality of the federal-
12 state partnership for ensuring universal service, and this
13 referral proceeding represents the latest chapter in that
14 cooperation. The decision anticipates continued
15 collaboration with the Commission as the Commission selects
16 inputs for its forward-looking costs model and otherwise
17 proceeds to ensure the preservation and advancement of
18 universal service.

19 The staff recommends adoption of the recommended
20 decision.

21 CHAIRMAN NESS: Then I assume that you reserve.

22 MR. KELLER: Yes. I was about to say that.

23 CHAIRMAN NESS: Okay. For editorial privileges.
24 Okay. The Joint Board's recommendation today moves the
25 universal service reform process a significant step closer

1 to fulfilling our statutory requirements. We now have a new
2 framework to preserve in advance federal support for
3 consumers in rural, insular, and high-cost areas.

4 This framework will provide specific, predictable,
5 and sufficient support for rates that are affordable and
6 reasonably comparable to rates charged for similar services
7 in urban areas as required by the Act.

8 I'd like to comment on a couple of areas in this
9 recommended decision. First, the Joint Board recommends
10 that the Commission replace its prior 75/25 approach to
11 universal service funding. Instead, the recommended
12 decision endorses the Commission's commitment to Congress to
13 hold the states harmless. Under this approach no study area
14 in any state would receive less support from the new high-
15 cost mechanism for nonrural carriers than it currently
16 receives from explicit federal mechanisms.

17 In addition, the Joint Board further recognizes an
18 additional need for federal funds to supply any universal
19 service support that states need but cannot reasonably be
20 expected to fund from intrastate sources, and I very
21 strongly support these recommendations. The Joint Board
22 majority reaffirms using a forward-looking economic cost
23 approach for universal service. It states that it
24 anticipates that the FCC's cost-proxy model will provide
25 reasonable cost estimates and encourages the Commission to

1 continue to work with the states through the selection of
2 inputs to develop an accurate model. And I support this
3 recommendation as well.

4 No economic model is perfect, but no one has
5 proposed a better alternative for estimating forward-looking
6 costs. The model is the only tool that has been identified
7 to permit an objective assessment of special needs that may
8 require increased federal support to particular study areas.
9 But just like a bottle of good wine should not be opened
10 before its time, we are not going to use this tool unless
11 and until it has achieved a level of accuracy,
12 predictability, and openness that earns it broad acceptance.

13 The Joint Board is also recommending a two-step
14 methodology for determining and allocating federal high-cost
15 universal service need, which will be finalized as the FCC
16 completes its work with the models. The additional federal
17 support above and beyond the whole TARMAS level will be
18 provided first when a telephone company service area in a
19 state has forward-looking costs significantly above the
20 national average, and, second, the state can't reasonably
21 fund that need from intrastate sources.

22 Key details remain to be formulated, but this
23 general framework strikes me as logical and fair. Joint
24 Board members generally agree that local competition is not
25 yet developing quickly, and they detect no clear evidence

1 that sources of implicit support have been undermined.

2 This reduces the urgency and the magnitude of
3 replacing implicit support with explicit support. But the
4 FCC and the states cannot neglect our responsibilities.
5 Both jurisdictions in their respective spheres must be
6 prepared to provide whatever explicit support may be needed
7 as competition diminishes the availability of implicit
8 support, and the FCC will be addressing this issue further
9 in our access reform docket.

10 Today's decision is important for what it does,
11 but it's also important for what it does not do. It does
12 not mean any reduction in universal service support
13 currently provided to nonrural carriers. It does not
14 preordain any significant increase in explicit universal
15 service funding nor create any colorable excuse for carriers
16 to increase charges to consumers. It does not preordain any
17 changes whatsoever in universal service support currently
18 provided to rural carriers.

19 The Joint Board process over the past several
20 months has been a healthy and constructive dialogue between
21 and among federal and state regulators, with varying
22 perspectives on high-cost universal service. As we've seen
23 on many occasions, regulators from high-cost states have
24 different concerns from those of low-cost states. And
25 although there always will be undoubtedly differing opinions

1 about how best to proceed, all sides have really been
2 listening to one another, and we've seen some important
3 breakthroughs, and this is exactly how the process should
4 work.

5 Most high-cost states now acknowledge the
6 legitimacy of certain points previously stressed by low-cost
7 states. In particular, they generally agree that keeping
8 telephone service affordable is a shared federal and state
9 responsibility, that much of the problem has been managed
10 and can continue to be managed by state public utility
11 commissions, who day in and day out toil to ensure that
12 their consumers are well served.

13 And that federal responsibility should be based on
14 the assumption that states will continue to shoulder their
15 own responsibilities. And, conversely, many low-cost states
16 now acknowledge the legitimacy of certain points previously
17 stressed by high-cost states. In particular, they generally
18 recognize that some states may have such high costs in
19 certain areas and such a disproportionately small number of
20 low-cost lines that they may require somewhat greater
21 assistance than has previously been provided from a federal
22 fund.

23 Balancing the interests of high-cost and low-cost
24 states will continue to be a charge, but I believe that the
25 framework that we recommend today truly represents a major

1 milestone, and I look forward to continuing this dialogue
2 with my colleagues on the Joint Board as partners in this
3 proceeding as the Commission continues to work on the next
4 vital steps.

5 Chairman Johnson?

6 CHAIRPERSON JOHNSON: Yes. To begin, I agree with
7 the comments that you have provided in your opening, and I
8 think you've done a good job of eloquently stating those
9 most important items in the recommendation.

10 Today's job is a tough job for regulators and for
11 the staff of regulators because we've been given a very
12 important but yet difficult mission, and that is to achieve
13 in a competitive or an environment that is becoming more
14 competitive, universal service.

15 It was easier before when we were dealing with
16 rate-of-return monopolies, continuing to ensure universal
17 service, but it has been a difficult task. It's been a task
18 that's taken the joint effort of our federal counterpart and
19 states to work together to sit and to discuss and to come up
20 with methodologies that will work for us all.

21 I tell you, talking to some of my counterparts
22 from low-cost states and also talking to others from
23 high-cost states, we understand that this is a difficult
24 decision to be made, but that we are all committed to
25 universal service. And that one thing I think that Congress

1 made clear, and they reminded us, and I know they reminded
2 the FCC when they talked, and the FCC agreed and committed
3 to the hold-harmless provision, that no matter how much
4 competition we get in the marketplace, that we have to
5 maintain universal service.

6 I believe that that was part of their commitment
7 with the hold-harmless provision. I believe that's why the
8 FCC committed to continuing to have that provision so that
9 whatever methodology we vote out today, we can do so and
10 give the public, give the industry, give those in high-cost
11 areas for nonrural providers some comfort that they will be
12 no worse off. And we've also given ourselves some time to
13 make sure that we get this all right.

14 I believe that over the next several months that
15 we will be working, continuing to work, though maybe not in
16 a formal, joint-board-referral-type process, we will be
17 continuing to work with the FCC as they develop both the
18 universal service and access reform proceedings to come up
19 with solutions that will benefit companies and customers
20 alike.

21 I say that because all of us recognize that
22 certainly the FCC has put forward a forward-looking platform
23 for determining the costing methodologies and that I, too,
24 believe that a forward-looking economic-cost model is the
25 best approach to take, but I do find some concern that we

1 aren't at a point where we know the inputs and we know all
2 of the results.

3 But it is in the spirit of cooperation and working
4 with the FCC and the other members of the Joint Board that
5 we have determined that we can't stop now, not just on
6 inertia, but because we have several things to do and to
7 accomplish so that we can help open markets and they can
8 become more competitive.

9 I understand that the access docket and the
10 universal service dockets are both being put forward
11 concurrently, and I believe that both of those orders should
12 be issued concurrently. So it is with that in mind that I
13 know that through this process we can continue to roll up
14 our sleeves, work together, and to reach a joint decision
15 that will, indeed, be in the best interests of all of our
16 citizens and will lay the framework for the FCC in their
17 final deliberations to the same.

18 Again, I think as we look at the order that we are
19 presented with today, one of the things that I found most
20 appealing is that we are recognizing the joint
21 responsibility and that for a lower cost/high-growth state,
22 that I can look and embrace the methodology that would say,
23 yes, all of the states must share some pain. Florida may
24 share a little more of that pain, but Florida can afford to
25 share a little more of that pain.

1 I'm willing to say that because we put together a
2 methodology that will allow all states and the federal
3 government to take responsibility to ensuring that as we
4 open our markets, they become more competitive, that will,
5 indeed, achieve universal service for all.

6 CHAIRMAN NESS: Thank you, Chairman Johnson.
7 Chairman Pat Wood.

8 MR. WOOD: I'd like to thank you all for your
9 willingness to give and take the interchange of ideas. It's
10 always refreshing for the wrong side of me, and I do
11 appreciate that everyone's opinions have served to educate
12 me more about this process. As the new kid on the block, I
13 wasn't quite sure what I was getting into when I got in
14 here, and I'm still not quite sure. But I do appreciate the
15 very conciliatory attitude, and I do think it sets a nice
16 standard for what I from the outside had assumed was a much
17 more fractious relationship than I've experienced here as a
18 member.

19 I appreciate the hard work of the federal and the
20 state staff, including my own Rowland Curry, who has been
21 spending many, many years trying to nail this into my head
22 what this is really all about.

23 One thing that this order does is indicate an
24 understanding that the universal service problem at the
25 federal level has two natures. One is to ensure the

1 reasonable comparability and affordability of rates among
2 the states, and the other is to remove the implicit support
3 in interstate rates. Now, this particular order has a lot
4 more to say about the first item, which is the reasonable
5 comparability issue, than it does about the second item,
6 which is the removal of interstate implicit support that's
7 in interstate rates today, and provides only general
8 guidance on that issue.

9 I would observe that the use of the model in this
10 construct is limited to serving as a tool, an objective
11 tool, of quantifying and distributing the support among
12 states for purposes of maintaining reasonable comparability
13 rates. It does not provide an absolute sizing as to this is
14 how much a given company should receive. The actual proper
15 sizing of that ultimate support should be and is the
16 responsibility of the state who will make up the balance of
17 what is not addressed through the federal mechanism.

18 I am pleased with all aspects of the order and do
19 not intend to write separately. I think we would all have
20 preferred more specificity on the guidance to the full
21 Commission on both the sizing and the distribution issues,
22 but for the points raised by Julia about some of the timing
23 on the model that we are presently looking at, that that was
24 not available to us, and so we've tried our best to be as
25 specific as possible. I appreciate the fine balance between

1 the state and federal roles that's reflected in this order
2 and recognizes that solutions under the umbrella of
3 federalism are shared ones.

4 Conceptually, finally, I recognize that this
5 process is intimately linking to the FCC's forthcoming
6 reform of interstate access rates. The identification of
7 that portion of access rates which support universal service
8 depends on how much that one deems to be remaining in state
9 rates. That line is a derivative of a cost-allocation
10 methodology, not a mysterious model or even an old-world
11 rate case. It's really just a policy decision that this
12 much is in our rates, and this much is in you all's rates.

13 Once the reasonable comparability issue of is
14 addressed to level the state playing field, I think the
15 focus of addressing universal service more broadly does and
16 should shift to the states. And, finally, in addition the
17 reasonable, comparability rates-issue fix, the FCC may
18 decide further that some portion of the CCS that is in the
19 access rates today is in federal rates and it supports
20 universal service.

21 If it does so, and, again, it should be noted that
22 this recommended decision does not urge or even recommend
23 that it do so, but merely observe that it has the right
24 under the law to do so, if it does so, the states will make
25 up the difference. In Texas we choose to use a model to

1 quantify this ultimate amount from which the federal support
2 would be subtracted, but other states may choose to use
3 implicit or existing rates or may choose to use the new
4 model as has been urged to be available to the states for
5 using their system.

6 But I do not have the concerns about the model
7 here because it is not used as an ultimate tool of rate
8 making, but it is used as a distributional tool to allocate
9 proportionate sales across the states for purposes of
10 reasonable comparability. And so for that reason, I am
11 pleased to vote aye for the order.

12 CHAIRMAN NESS: Thank you very much. Commissioner
13 Tristani?

14 COMMISSIONER TRISTANI: Madam Chair, Fellow
15 Commissioners, I want to start out by thanking all of you
16 for being very frank, for being very patient, and for
17 sharing your very different perspectives at times. Although
18 there will be some matters that we can't agree on, I really
19 do value our working together, and I would look forward to
20 continuing to work together as a joint board on formal
21 referrals or on informal matters. I wanted to make that
22 real clear.

23 In the interest of time, I'm going to be very
24 brief. I generally support today's addition, but there are
25 three discreet issues on which I'm going to have to dissent,

1 and they are written up in my statement, and with that, I'd
2 like to move the process along.

3 CHAIRMAN NESS: Thank you very much, Commissioner
4 Tristani. Commissioner Laska Schoenfelder?

5 MS. SCHOENFELDER: Thank you, Chairman Ness. I am
6 going to first thank the staff and my fellow commissioners,
7 both state and federal. We have worked hard on these issues
8 together. I see Cathy Brown back there. She has dedicated
9 a lot of her time and effort to this. Jim Casserly, Paul
10 Gallant, Kevin Martin, all of you have been really helpful,
11 as well as the states' staff. I know that you did a lot of
12 work until early this morning and really appreciate all of
13 the work. I also appreciate the work and being able to work
14 with my fellow commissioners.

15 I find that this recommended decision is really
16 difficult for me to vote for, so, therefore, I am going to
17 dissent, not because -- I might in the end agree with this
18 decision, except that there are no specific numbers here
19 that I can deal with. I don't feel that I can vote for this
20 item simply because I feel like I'm putting too much on
21 blind faith, and there are no numbers with which I can deal.

22 Even though it says in the recommended decision
23 that these recommended benchmarks would not apply to rural
24 carriers at this time, I have written a dissent where I will
25 go into more specifics. However, I am concerned that there

1 will be a precedent, not intended or not, for rural
2 carriers.

3 I also know that in the order or in the
4 recommended decision it says that we recommend a different
5 methodology than the 25/75. I want to believe that the
6 federal definition should be funded percent 100 from the
7 federal fund. I have problems with the two-step methodology
8 that states must meet, and I also still have problems with
9 assessing the inter and intrastate jurisdiction, and I filed
10 a separate decision. I will let that decision on file speak
11 for itself.

12 I think that some day down the road, hopefully
13 when we have real numbers, I can agree with the majority on
14 this decision, but right now I can't.

15 CHAIRMAN NESS: Thank you very much, Commissioner
16 Schoenfelder. Commissioner Furchtgott-Roth?

17 MR. FURCHTGOTT-ROTH: Thank you, Madam Chair. I'd
18 like to start by thanking you, Commissioner Ness, and
19 Chairman Johnson for just their heroic efforts over the past
20 few months. This has been a very difficult problem for the
21 Joint Board. The two of you have taken enormous strides to
22 keep this moving along, and as Chairman Wood said, it has
23 all the been done in a very collegial and cooperative way.

24 I know the two of you have invested a lot of your
25 personal time in this, and I think it shows in terms of how

1 friendly the whole process has been. And as great as your
2 two efforts have been, the staff have been working around
3 the clock for seemingly months on end on this, and the rest
4 of us on the board have benefitted from all of this.

5 There have been a lot of very good intentions.
6 There have been a lot of very good efforts, and I set for
7 myself two goals in this. One is to find something in this
8 that I could actively support and to keep some good humor
9 about it all. And I'm very pleased to report that I have
10 been at least half-way successful.

11 In the old days of telecommunications regulation
12 there was micromanagement, micromanagement based on the idea
13 that government, not consumers, were omniscient and
14 omnipotent, and market outcomes were determined by
15 government with models. Sometimes efficiency concerns, the
16 government could do better than consumers. Equity concerns,
17 again, the Government knows best. Prices reflected costs
18 only coincidentally because all prices were set by the
19 Government, and every time a consumer paid more for a
20 service than a business would have been willing to provide
21 absent regulation, consumers lost and lost and lost.

22 The costs in terms of efficiency were enormous.
23 When it comes to efficiency, it is folly to believe that
24 governments can do anything other than get in the way. When
25 a government says that a model can do as well as a market in

1 terms of efficiency, the government is engaged in
2 self-deception. The deception ends not with the better
3 model, but with the market.

4 There were and are legitimate governmental
5 concerns about equity and distribution. There are efficient
6 means to collect revenues for distributional concerns, to
7 construct proper incentives for its use, and to monitor its
8 use. But there are no efficient means to decide the equity
9 issues of who should receive support. Let me just give one
10 example. Deciding to have children is purely an equity
11 matter; it's not an efficiency issue. And if all issues
12 were based on efficiency models, no one would have children.
13 And as a father of six children, I can tell you, there are
14 no efficiencies involved.

15 The Telecommunications Act of 1996 was a landmark
16 act. It was intended to end the period of micromanaging
17 regulation of telecommunications. No longer would
18 government tell consumers from whom they could purchase
19 services; consumers would decide. No longer would
20 governments tell businesses to whom they could sell
21 services; businesses would decide.

22 Under the Act, markets, not governments, would
23 finalize a means of getting to more competition and
24 efficiency to the benefit of all consumers. In the area of
25 competition and efficiency Congress is clearly looking for

1 revolutionary and deregulatory changes in telecommunications
2 markets.

3 Under the Act there is also special consideration
4 for universal service, the continuing government concern for
5 equity issues. Congress determined that universal service
6 programs were to be preserved, not radically altered. Make
7 no mistake: Congress's primary concern with universal
8 service in 1996 was rural America.

9 When Congress passed the Act in 1996, the hope and
10 the aspiration of many members from rural states was that
11 competition and innovation in telecommunications markets
12 would come for the entire nation and that universal service
13 mechanisms would continue to help ensure service in rural
14 America.

15 At the time, rural America was nervous about the
16 deregulation of telecommunications. There was a popular
17 perception that deregulation in other industries had
18 primarily benefitted other areas of America and had left
19 rural America behind. I do not agree with that assessment
20 of deregulation, but I cannot deny the palpable fear, which
21 many rural members of the Congress greeted deregulation of
22 telecommunications services.

23 The purpose of Section 254 was largely to allay
24 those fears, fears of uncertainty, fears that deregulation
25 would be harmful to rural America. Section 254 was one of

1 the great compromises of the Act: deregulation for all
2 Americans; continuation of universal service for rural
3 America. If federal universal service support were to grow
4 after the Act, it is unmanageable that that growth was not
5 intended primarily for rural America.

6 Federal universal service support has nearly
7 doubled in size since the passage of the Act. Amazingly,
8 most of the growth has not been for rural states. Growth of
9 universal service has been for other programs, largely in
10 other areas of America. It is under the umbrella of
11 universal service for high-cost support for nonrural
12 carriers that this Joint Board has met.

13 Our job should have been to ensure no radical
14 changes, nothing to further raise the level of uncertainty
15 in rural America, yet we have come to recommend use of a
16 model to allocate high-cost universal service support, a
17 radical departure, more uncertainty. It is a model that few
18 people understand today, and it is one that may yet change
19 tomorrow -- more uncertainty.

20 Should rural states continue to receive the
21 federal support they receive today? The majority says yes
22 to explicit support but no to implicit support, the vast
23 majority of support to rural America. This is supposed to
24 reduce uncertainty in rural America? Hardly. And we have
25 no numbers. We have no numbers, just theory, algorithms,

1 and hope -- the same sorts of theory that formed parts of
2 the foundation for micromanagement of telecommunications
3 markets in the past.

4 Ultimately, it is based on the premise that
5 government agencies, through clever models, can make
6 efficient decisions better than markets. We simply
7 transplant that reasoning to allocating universal service.
8 Will small companies be exempted under the model? We never
9 say no -- more uncertainty. Yet we endorse the model. And
10 at times it seems we almost trample on states in the
11 process. Should the federal government tax revenues outside
12 our jurisdiction? Not according to basic concepts of
13 federalism, but the majority today, we shall.

14 Should the dispersement of universal service
15 support be micromanaged from Washington, or should decisions
16 be left to states in the form of block grants?
17 Micromanagement. Should states be forced to set up
18 intrastate universal service support? Not explicitly
19 required, but implicitly it is, and not just required, but
20 at a three-percent level of all revenues. Should
21 truth-in-billing issues be left to states with clear legal
22 authority? Again, the recommendation is much more for
23 Washington.

24 There is much to commend this. It has all come
25 together with the absolute best of intentions, and it has

1 been done in a very friendly process. I wish that I could
2 support this item, but I cannot. I think it is a measure of
3 a great deal of effort, and in the end I think it is also a
4 measure of how much further we have to go.

5 We have not yet begun to solve the problems of
6 universal service in America. It is a challenging problem.
7 It is one that this Joint Board has spent a great deal of
8 effort. We have made some progress. We have a great deal
9 more progress to make, and I look forward to working with my
10 colleagues and the staff in the future on this. Thank you
11 very much.

12 CHAIRMAN NESS: Consumer Advocate Martha Hogerty,
13 please.

14 MR. HOGERTY: Thank you Chair Ness. Also, I would
15 like to thank the fellow members of the Joint Board for
16 their hard work, especially the staff members who have
17 worked so hard through these issues. I, too, support the
18 recommended decision. I believe it establishes a framework
19 to ensure reasonable comparability, a fair range of urban
20 and rural rates, both within and among states. The
21 parameters need to be developed further, and I look forward
22 to working with the federal Communications Commission, the
23 state commissioners to continue to ensure comparability.

24 I want to emphasize that this recommendation
25 focuses on comparability and not on the elimination of

1 implicit support. In my view, this is an appropriate
2 approach. Section 254 does not require that regulators take
3 measures to identify and eliminate all implicit support.
4 Previously, in the May '98 order, the Commission made
5 support implicit by transferring the universal service fund
6 into a special fund as well as the HTS and the DEM portions
7 that were previously implicit.

8 At this time, I don't think any further actions
9 are necessarily required to deal with implicit support
10 because, as I believe several commissioners have already
11 previously noted, competition will eliminate any implicit
12 support that is currently in rates. There is no
13 recommendation in this order that a state remove implicit
14 support or that a state establish a universal service fund.
15 Each state is free to address its own requirements as it
16 sees fit. Similarly, with respect to interstate
17 jurisdiction, we do not specifically recommend that the
18 Commission identify and eliminate implicit support from
19 interstate access charges.

20 Competition for access at the federal level has
21 not evolved any more than local competition at the state
22 level, but we do recognize the Commission is looking at this
23 issue in its access charge reform proceeding, and it intends
24 to synchronize the two orders when the ultimate orders come
25 out.

1 If the Commission decides to transfer some
2 revenues that are now generated through access charges into
3 the universal service fund, I am concerned that access rates
4 now subject to price-cap adjustments will be shielded and
5 protected from appropriate reductions, and also any
6 consideration of access-charge reductions should take into
7 account the requirement in the statute that the joint and
8 common costs be properly allocated and that universal
9 service not bear any more than a reasonable share.

10 At this time, total loop costs reflected in the
11 access revenues are borne, approximately 86 percent, by
12 universal service. So I urge the Commission when it looks
13 at this issue to carefully consider that fact and to
14 seriously consider making some kind of an offsetting
15 reduction to the subscriber line charge, and I believe that
16 option is set forth in the recommended decision.

17 Finally, I fully support the recommendation that
18 the Commission carefully consider that carriers should
19 recover their universal service contributions if they choose
20 to do so on a line-item basis on the customer's bill, to do
21 so in a manner that is truthful and not misleading.
22 Misleading and confusing consumer bills continue to be a
23 serious problem, and because of the urgency, I would ask the
24 Commission to act promptly on this issue. I look forward to
25 continuing work with the members of this body. Thank you.

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1 CHAIRMAN NESS: And finally Commissioner Dave
2 Baker.

3 MR. BAKER: Thank you, Madam Chair. This second
4 recommended decision, which is the first that I've been able
5 to participate in, marks the completion of an important
6 phase in the ongoing process of reforming universal service
7 in a manner which recognizes and is consistent with the
8 emergence of local competitive, telecommunications markets.

9 Today's recommended decision deals just with
10 high-cost funding, just with nonrural carriers. As such, it
11 is a piece of a piece, but a very important one in putting
12 together the overall puzzle of reforming universal service.
13 Overall, I support today's recommended decision, and let me
14 say that initially I was probably a skeptic, so it's fair to
15 say I've probably been won over.

16 I do join Florida and State Chair Julia Johnson in
17 issuing a separate statement, mostly for purposes of
18 emphasizing a few issues which are important to me.

19 First, I support the use of forward-looking
20 economic costs for purposes of determining high-cost
21 support, and I feel by necessity if one supports
22 forward-looking economic costs, one has to support a model.
23 And so conceptually, I do support the use of a model;
24 however, whatever model or models are currently being
25 discussed, none has been sufficiently developed, tested, or

1 demonstrated to me for purposes of me endorsing any
2 particular model at this time. But I do support the
3 recommended decision's recommendation to continue the
4 development of models and the inputs that will go with them
5 while not making an endorsement of any specific model at
6 this time.

7 I further support the part of the recommendation
8 that says, should a model not be developed in time to meet
9 our July 1, 1991 implementation deadline, that the present
10 method of support be continued.

11 I also agree with the safeguard of hold-harmless
12 provisions, which will ensure that regardless of which model
13 is developed and chosen and regardless of which inputs are
14 used, no study area will receive any less support than it
15 does today, and I think that should provide comfort to those
16 affected.

17 As indicated in the separate statement, I support
18 continued review of the role of access charges in universal
19 service support. For instance, we are all familiar with the
20 USTA proposal, and while I would not endorse that in full,
21 for instance, we would need to determine what portion of
22 access charges do go to contributing universal service
23 support. There seems to be agreement with the notion that,
24 in fact, at least some portion of them do, and so I urge the
25 Commission to continue to look at that in the context of

1 their access charge reform order, which I know is being
2 examined concurrently with this universal service order, and
3 quite properly, they do go together.

4 Any methodology which we adopt, again, should both
5 recognize and be consistent with the emergence of
6 competitive telecommunications markets, and it is my belief
7 and certainly intent that what we are putting forth in our
8 recommended decision today is consistent that goal. In
9 terms of the size of the fund, I support a fund not
10 radically larger than what we have today, and, again, I
11 consider that goal to be met or at least meetable -- pardon
12 my making up that word -- with this. I think that it can be
13 met with this recommended decision that we are issuing.

14 We do need to be mindful of the objectives in
15 reforming universal service. First and foremost, when we
16 are discussing high cost of support, they may be nonrural
17 carriers, but they are still rural customers that we are
18 concerned with, and we need to make sure that we continue to
19 support rural telecommunications service. Again, I intend
20 and believe that this recommended decision does that, and
21 furthermore, that that support be done in a manner which,
22 again, recognizes and is not inconsistent with the
23 development of a competitive telecommunications market.

24 On a personal note, as you know, I will be
25 changing my role very soon, and so this will mark the end of

1 my participation in the Federal-State Joint Board on
2 Universal Service. And it has been an honor and a pleasure
3 to participate in this process. I hope that I have been
4 able to contribute to it as well.

5 My sincere thanks to my federal and state
6 colleagues and, of course, to the federal and state staff
7 members without whose efforts this would not have been
8 possible. As I've said before, you all have done a yeoman's
9 job, and I'm not quite sure what a yeoman is, but I know he
10 works hard, and he does a great job, and I thank you all
11 very, very much.

12 CHAIRMAN NESS: Thank you very much, Commissioner
13 Baker. I join my colleagues in wishing you all the best in
14 your new endeavors and to say that you have, indeed, made an
15 invaluable contribution to the work of the Joint Board, and
16 your involvement and active contributions have been
17 extremely helpful as we've proceeded. Would anyone else
18 like to have a debate, discussion, any other points,
19 responses to any other points that were made before we go to
20 a vote?

21 (No response.)

22 CHAIRMAN NESS: I think everyone is tired of the
23 discussion, having worked very hard on this over the past
24 weekend. Hearing no desire for additional comments, then
25 let's proceed to a vote. We are voting on the November 22nd

1 draft. Final edits will be provided in a post-adoption
2 manner, but we are voting on the November 22nd draft.

3 All those in favor, please signify by saying eye.

4 (A chorus of ayes.)

5 COMMISSIONER TRISTANI: Aye, with a partial
6 dissent on three issues.

7 CHAIRMAN NESS: Those opposed will signify by
8 saying nay.

9 (A chorus of nays.)

10 CHAIRMAN NESS: Okay. The ayes have it, and we
11 will now close. I'd like to thank and have Chairman Johnson
12 thank the federal staff, and I will thank the state staff in
13 a demonstration yet again of how closely we have worked
14 together for their very hard work. Commissioner Johnson?

15 CHAIRPERSON JOHNSON: Again, thank you all. My
16 state counterparts and the FCC Commissioners, it's been a
17 long several months, and my mother always said, "Watch what
18 you ask for; you might just get it." And I was feeling that
19 way about 12 o'clock last night, spending time with my
20 friends. And, most importantly, I wanted to thank the staff
21 for all their work because probably about 5 a.m. this
22 morning they were still feeling it.

23 And with that, I wanted to give special thanks to
24 the federal staff members: Andy Firth, Jane Whang, Kaylene
25 Shannon, Lori Wright, Chuck Keller, Emily Hoffnar, Lisa

1 Gelb, Jim Schlichting, Cathy Brown; and on the personal
2 staffs, Jim Casserly, Paul Gallant, and Kevin Martin. Thank
3 you all for your help.

4 CHAIRMAN NESS: And I would like to thank the
5 members of the state staff. Many of them have spent
6 countless hours here in Washington working hand in hand with
7 our federal staff to develop the recommended decision that
8 you will be seeing shortly: Karl Johnson, Peter Bluhm,
9 Tiane Sommer, Walter Bolter, Barry Payne, Brian Roberts,
10 Charlie Bolle, Rowland Curry, Lori Kenyon, Sandra
11 Makeet-Adams, Doris McCarter, Mark Long, Mary Newmeyer, Phil
12 McClelland, Susan Miller, Thor Nelson, Tom Wilson, and Ann
13 Dean.

14 I hope I have not left anyone out. If I have, my
15 very sincere apologies. Again, the staff has been
16 extraordinarily productive in its efforts working together,
17 and I would reiterate that the staff and the state and
18 federal members of the Joint Board will continue to
19 establish and work through the issues as we approach the
20 Commission's rendering a final decision on Universal Service
21 High-cost Fund anticipated for this spring.

22 And if no one else has any other comments that
23 they would like to make, then I would close by saying thank
24 you all very much, and we are adjourned.

25 //

1 (Whereupon, at 1:12 p.m., the meeting was
2 adjourned.)
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REPORTER'S CERTIFICATE

FCC DOCKET NO.: N/A

CASE TITLE: FEDERAL-STATE JOINT BOARD

HEARING DATE: November 23, 1998

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 12-8-98



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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

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